

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6389 / August 30, 2023

Admin. Proc. File No. 3-19733

In the Matter of

NICHOLAS J. GENOVESE

ORDER GRANTING EXTENSION OF TIME

On March 24, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Nicholas J. Genovese pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ On May 27, 2020, Genovese filed a motion requesting a ninety-day extension of time to file an answer to the OIP, but also submitted an “Answer in Opposition to Allegations,” which “den[ied] all the allegations contained in Section II” of the OIP as “materially misrepresented.” Because Genovese specifically had sought an extension of time, the Commission issued an order on June 15, 2020, granting Genovese until September 14, 2020, to file an answer to the OIP.² Genovese did not respond to the June 2020 order or to two subsequent orders requiring him to file an answer or clarify that the document he previously filed with his May 2020 motion was his answer.³

The Commission subsequently learned that, because Genovese has been incarcerated at three or more different federal prison facilities during the course of this proceeding, he may not have received one or more of the post-OIP orders referenced above.⁴ Accordingly, on July 27,

¹ *Nicholas J. Genovese*, Advisers Act Release No. 5468, 2020 WL 1433033 (Mar. 24, 2020); see 15 U.S.C. § 80b-3(f).

² *Nicholas J. Genovese*, Advisers Act Release No. 5521, 2020 WL 3249832, at *1 (June 15, 2020).

³ *Id.*; *Nicholas J. Genovese*, Advisers Act Release No. 5778, 2021 WL 2987125, at *1 (July 15, 2021); *Nicholas J. Genovese*, Advisers Act Release No. 6289, 2023 WL 3017563, at *1 (Apr. 19, 2023).

⁴ See *Genovese*, 2023 WL 3017563, at *1 (stating that it appears that “Genovese no longer resides at MDC Brooklyn and may not have received one or more of the Commission’s orders in this case”); *Nicholas J. Genovese*, Advisers Act Release No. 6357, 2023 WL 4845833, at *1 (July 27, 2023) (stating that it appears “Genovese now resides at a[nother] new federal correctional institution and did not receive a copy of the Commission’s April 2023 order”).

2023, the Commission ordered Genovese, by September 14, 2023, to either file an answer to the OIP's allegations (as he previously requested additional time to do) or file a statement that he intends his previously filed "Answer in Opposition to Allegations" to be his answer to the OIP.

On August 15, 2023, the Commission's Office of the Secretary received from Genovese a "Response to SEC Order 7/27/2023 and Extension of Time Request" dated August 2, 2023. In his filing, Genovese stated that he had not received certain orders and other documents referenced in the July 2023 order and requested "a 90 day extension to file a response to my current case." Genovese included a certificate of service with his filing stating that he had served it on counsel for the Division of Enforcement by mail. The Division has not opposed Genovese's motion.

We construe Genovese's filing as a statement that he intends to file an answer to the OIP, rather than rely on his previous filing, and as a request for additional time to do so. Under the circumstances here, it appears appropriate to grant Genovese's unopposed request for good cause shown.⁵ For the avoidance of doubt,⁶ copies of all orders issued in this proceeding, including the OIP, and other materials that Genovese says he did not receive and needs to prepare his answer⁷ are enclosed with this order.⁸

In his answer, Genovese "shall specifically admit, deny, or state that [he] does not have, and is unable to obtain, sufficient information to admit or deny each allegation" in the OIP.⁹ Any allegation that Genovese does not deny or state that he lacks sufficient information to admit

⁵ See *In re Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020) (stating that "pending further order of the Commission, all reasonable requests for extensions of time will not be disfavored as stated in Rule 161" (citing 17 C.F.R. § 201.161(b)(1))).

⁶ In his motion, Genovese asserts that he "never" received a copy of the OIP, although he previously filed a document with the Commission generally denying its allegations.

⁷ The additional materials are guidance documents from the Office of the Secretary, the Commission's Rules of Practice, and information regarding the Commission's e-filing system.

⁸ Genovese also attached to his motion a June 6, 2023 letter to counsel for the Division of Enforcement in which he asserts that he may not have received other documents in this proceeding. Accordingly, a list of the docket entries in this case is also enclosed, which shows that the only entry other than Commission orders and filings by Genovese is a notice of appearance filed by Division counsel. The location of Division counsel's office changed since that filing and, in any case, Genovese is aware of Division counsel's current contact information. Finally, although Genovese complains that the Commission did not respond to his June 6 letter, he did not send it to the Office of the Secretary, but rather solely to the Division.

⁹ Rule of Practice 220(c), 17 C.F.R. § 201.220(c).

or deny “shall be deemed admitted.”¹⁰ Genovese shall also list any affirmative defenses in his answer.¹¹

Accordingly, IT IS ORDERED that Genovese shall file an answer to the OIP’s allegations by November 27, 2023. Genovese shall deliver his response to this order to the proper prison authorities no later than the above due date, for forwarding to the Commission’s Office of the Secretary.¹² If Genovese fails to file an answer he may be deemed in default, the allegations of the OIP deemed true, and the proceedings determined against him based on the record.¹³

Pursuant to Rule of Practice 180(c), Genovese’s failure to make a filing in response to this order may result in the Commission’s determination of the matter at issue against him, a finding of waiver, or such other sanction as the Commission finds appropriate.¹⁴

¹⁰ *Id.*

¹¹ *Id.* (stating that failure to list an affirmative defense “may be deemed a waiver”).

¹² *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (holding that, under federal prison mailbox rule, pro se prisoners’ notices of appeal are “filed” at moment of delivery to prison authorities for forwarding to the district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (per curiam) (noting that this “mailbox rule [applies] to other filings by pro se prisoners”). We deem Genovese’s previous filing to be a certification of his inability to serve and file electronically during the duration of this proceeding pursuant to Rules of Practice 150(c)(1) and 152(a)(1). 17 C.F.R. §§ 201.150(c)(1), 201.152(a)(1).

¹³ *See* Rule of Practice 155(a), 17 C.F.R. § 201.155(a); *see also Genovese*, 2020 WL 1433033, at *2.

¹⁴ 17 C.F.R. § 201.180(c).

We remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.¹⁵

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹⁵ See also Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) (“Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.”). The Division of Enforcement is represented by Alexander M. Vasilescu (vasilescua@sec.gov) in this proceeding. His mailing address is New York Regional Office, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.